

REMARKS

Rejection of Claims under 35 U.S.C. § 102

Claims 1, 2, 4, 7-12, 17-20, 22, 25-29, 31, 32, 35 and 37 are rejected under 35 U.S.C. § 102(e) as being anticipated by Bartfai et al., U.S. Publication No. 2005/0081091 (Bartfai). Applicants respectfully traverse this rejection.

While not conceding that the cited reference qualifies as prior art, but instead to expedite prosecution, Applicants have chosen to respectfully disagree and traverse the rejection as follows. Applicants reserve the right, for example, in a continuing application, to establish that the cited reference, or other references cited now or hereafter, does not qualify as prior art as to an invention embodiment previously, currently, or subsequently claimed.

Independent claim 1 is representative of independent claims 11, 19, 27, and 35, and recites:

1. A method comprising:
maintaining a synchronous copy of a data change log at a primary node, wherein
said data change log at said primary node is associated with a primary data
volume of said primary node; and
said synchronous copy of said data change log is maintained at a data recovery
node;
asynchronously updating a secondary data volume of a secondary node using said
synchronous copy of said data change log.

Applicants respectfully note that MPEP §2131 states “[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegall Bros. V. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Applicants respectfully submit that the Office Action fails to demonstrate that the reference shows, teaches or even suggests several of the foregoing limitations, using claim 1 as an example. To wit:

“...
a data change log at a primary node
...”

Bartfai, in the cited portions or elsewhere, insofar as Applicants are able to discern, provides no teaching of a data change log at a primary node. The following parallel is drawn in the Office Action: "... data change log (data updates) at a primary node...." (Office Action, p. 3). The Office Action seems to be saying that the data updates are the data change log, or vice-versa. However, the Office Action also cites ¶ 34 of Bartfai, and so seems to be equating a data change log with the OOS or CR bitmaps disclosed in the reference. (Office Action, p. 3). Whatever the case, Applicants respectfully note that Bartfai discloses OOA and CR bitmaps contained at a secondary node, not at a primary node. ("The second storage unit also includes an out of synch (OOS) bitmap." Bartfai, ¶34.) Further, it is commonly known to those of ordinary skill in the art that a data change log and data updates are not the same thing. A data change log stores data associated with a given write operation, while the data updates (writes) are stored within the volume being updated. It is clear from the claim language that, contrary to the Office Action's implication, the data change log at the primary node is associated with the primary volume of the primary node and, as such, it is clearly not the updated data contained in the primary volume. Fig.1 provides further clear support for this position.

Applicant therefore respectfully submits that the Office Action fails in its burden of demonstrating that Bartfai does indeed teach each and every limitation of claim 1. This comes as no surprise because, unlike Applicants' disclosure, Bartfai is directed toward a cascading data replication system (as is evident from, at least, the title "Method, system and article of manufacture for recovery from a failure in a cascading PPRC system").

Finally, the Office Action makes assertions of inherency in several places. For example, the Office Action states, "[I]nherent feature. Data can be in blocks". Office Action, p.4. As stated in MPEP § 2112, "The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993)" MPEP § 2112 also provides that "In relying on a theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art." *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original). Applicants respectfully submit that the Office Action provides no such evidence or rationale tending to show inherency.

Applicants respectfully submit, therefore, that independent claims 1, 11, 19, 27, and 35 are allowable over the cited sections of Bartfai, and so Applicants respectfully urge that the §102 rejection of these claims be withdrawn. Applicants further respectfully submit that all claims which depend therefrom are allowable at least by virtue of depending upon allowable base claims in addition to being allowable for various other reasons.

CONCLUSION

Applicants submit that all claims are now in condition for allowance, and an early notice to that effect is earnestly solicited. Nonetheless, should any issues remain that might be subject to resolution through a telephonic interview, the Examiner is requested to telephone the undersigned.

If any extensions of time under 37 C.F.R. § 1.136(a) are required in order for this submission to be considered timely, Applicant hereby petitions for such extensions. Applicant also hereby authorizes that any fees due for such extensions or any other fee associated with this submission, as specified in 37 C.F.R. § 1.16 or § 1.17, be charged to deposit account 502306.

Respectfully submitted,



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